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CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999 (CEPA 1999)

A Guide to Understanding the *Canadian Environmental Protection Act, 1999*

Canada

Guide to CEPA 1999

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Guide to CEPA 1999

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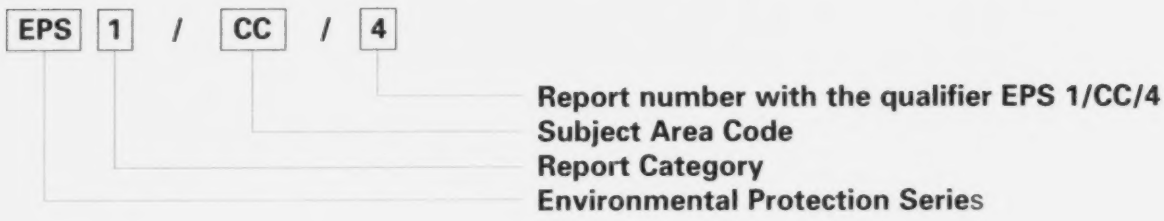
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A Guide to Understanding the *Canadian Environmental Protection Act, 1999*

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1 Introduction

This Guide explains the key features of the *Canadian Environmental Protection Act, 1999* (CEPA 1999). CEPA 1999 is an important part of Canada's federal environmental legislation aimed at preventing pollution and protecting the environment and human health. The goal of CEPA 1999 is to contribute to sustainable development—development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs.

CEPA 1999 came into force on March 31, 2000 following an extensive Parliamentary review of the former CEPA. CEPA 1999 contains significant improvements for the protection of the environment over the former Act. It:

- makes pollution prevention the cornerstone of national efforts to reduce toxic substances in the environment;
- sets out processes to assess the risks to the environment and human health posed by substances in commerce;
- imposes timeframes for managing toxic substances;
- provides a wide range of tools to manage toxic substances, other pollution and wastes;
- ensures the most harmful substances are phased out or not released into the environment in any measurable quantity;
- includes new provisions to regulate vehicle, engine and equipment emissions;
- strengthens enforcement of the Act and its regulations;
- encourages greater citizen input into decision-making; and
- allows for more effective cooperation and partnership with other governments and Aboriginal peoples.

This Guide describes CEPA 1999's:

- role in environmental management in Canada;
- objectives and guiding principles;
- environmental protection management process; and
- key programs aimed at protecting the environment and human health.

For further information on CEPA 1999, please refer to the list of contacts and sources in Appendix A and the various websites listed in Appendix B.

2 Environmental Management in Canada

In Canada, each level of government has powers to protect the environment. This shared nature of environmental jurisdiction makes close cooperation among the federal, provincial, territorial and Aboriginal governments important to Canada's environmental well-being.

Within the federal government, CEPA 1999 is the primary element of the legislative framework for protecting the Canadian environment and human health. A key aspect of CEPA 1999 is the prevention and management of risks posed by toxic and other harmful substances. CEPA 1999 also manages environmental and human health impacts of products of biotechnology, marine pollution, disposal at sea, vehicle, engine and equipment emissions, fuels, hazardous wastes, environmental emergencies and other sources of pollution. The Minister of the Environment is accountable to Parliament for the administration of all of CEPA 1999. Both the Minister of the Environment and the Minister of Health jointly administer the task of assessing and managing the risks associated with toxic substances.

Efforts taken under CEPA 1999 are complemented by actions taken under other federal Acts administered by the Minister of the Environment. The *Fisheries Act*, which is administered by the Minister of the Environment on behalf of the Minister of Fisheries and Oceans, includes provisions to prevent pollution of waters inhabited by fish. Through the *Canada Water Act*, water resources and their environmental quality are managed. The Minister of the Environment also manages some aspects of wildlife through the *Species at Risk Act*, the *Canada Wildlife Act*, the *Migratory Birds Convention Act, 1994*, and the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*. Efforts under the *Canadian Environmental Assessment Act* ensure that the environmental effects of various projects are carefully reviewed before action is taken in order to avoid significant adverse environmental effects.

There are also a number of specialized Acts administered by other federal departments that are useful in protecting the environment. Several Acts are used to control, among other things, the introduction of new substances and products of biotechnology into the Canadian market so that the risk to the environment and human health is reduced. These Acts include the *Pest Control Products Act*, the *Feeds Act*, the *Seeds Act*, and the *Health of Animals Act*. In addition to the previously mentioned *Fisheries Act* and the *Canada Water Act*, the federal government also has a number of other Acts designed to protect our waters. The *Arctic Waters Pollution Prevention Act* was introduced to prevent pollution of waters in the Canadian arctic. The *Oceans Act* includes provisions for the protection of marine areas. Several Acts contain provisions that ensure environmentally responsible actions. Examples include the *Canada Shipping Act* and the *Transportation of Dangerous Goods Act*.

Canada is intricately linked to other countries around the globe economically, environmentally and socially. While global and regional environmental problems impact on Canada's vast geography (e.g., ozone depletion, persistent organic pollutants, climate change), Canada also has a responsibility to reduce its contributions to these problems. Canada has a long history of international cooperation across a broad range of environmental issues. Arrangements range from informal sharing of information to the adoption of formal cooperative agreements to achieve common goals. CEPA 1999 provides the means and opportunity to cooperate with international governments to achieve Canada's environmental policy and regulatory goals.

3 CEPA 1999 Guiding Principles

CEPA 1999 sets out several guiding principles in the preamble and embodies them in the administrative duties of the government. Key among them include:

Sustainable Development — The Government of Canada's environmental protection strategies are driven by a vision of environmentally sustainable economic development. This vision depends on a clean, healthy environment and a strong, healthy economy that meets the needs of the present generation without compromising the ability of future generations to meet their own needs.

Pollution Prevention — CEPA 1999 shifts the focus away from managing pollution after it has been created to preventing pollution. Pollution prevention is "the use of processes, practices, materials, products, substances or energy that avoid or minimize the creation of pollutants and waste and reduce the overall risk to the environment or human health."

Virtual Elimination — CEPA 1999 requires the virtual elimination of releases of substances that are persistent (take a long time to break down), bioaccumulative (collect in living organisms and end up in the food chain), toxic (according to CEPA 1999 Section 64) and primarily the result of human activities. Virtual elimination is the reduction of releases to the environment of a substance to a level below which its release cannot be accurately measured.

Ecosystem Approach — Based on natural geographic units rather than political boundaries, the ecosystem approach recognizes the interrelationships between land, air, water, wildlife and human activities. It also considers environmental, social and economic elements that affect the environment as a whole.

Precautionary Principle — The government's actions to protect the environment and health are guided by the precautionary principle, which states that "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

Intergovernmental Cooperation — CEPA 1999 reflects that all governments have the authority to protect the environment and directs the federal government to endeavour to act in cooperation with governments in Canada to ensure that federal actions are complementary to and avoid duplication with other governments.

National Standards — CEPA 1999 reinforces the role of national leadership to achieve ecosystem health and sustainable development by providing for the creation of science-based, national environmental standards.

Polluter Pays Principle — CEPA 1999 embodies the principle that users and producers of pollutants and wastes should bear the responsibility for their actions. Companies or people that pollute should pay the costs they impose on society.

Science-based Decision-Making — CEPA 1999 emphasizes the integral role of science and traditional aboriginal knowledge (where available) in decision-making and that social, economic and technical issues are to be considered in the risk management process.

4 Environmental Protection Management Process

The environmental management process used in the implementation of CEPA centres around four key activities (see Figure 1)

- research and monitoring
- risk assessment
- risk management; and
- compliance promotion and enforcement.

Each stage of the process includes information exchange in the form of cooperation with other governments, public participation and reporting on progress.

Figure 1: Environmental protection management process

4 Environmental Protection Management Process

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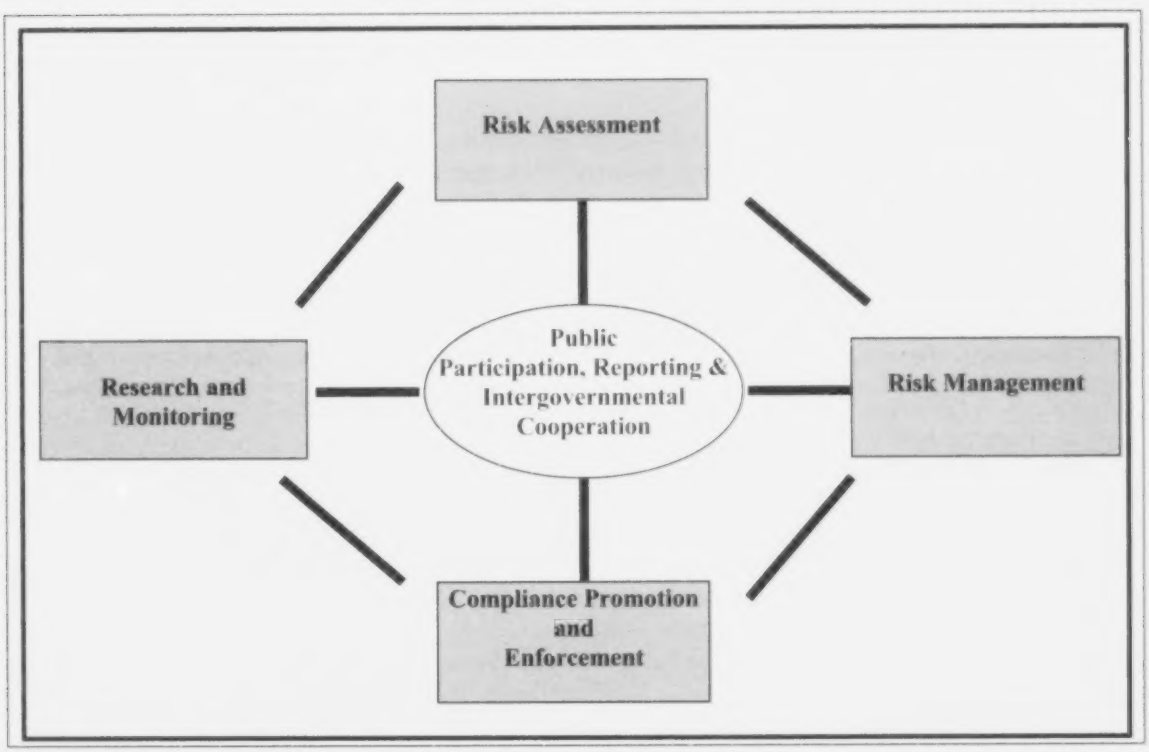
Figure 1: Environmental protection management process



Research and Monitoring — Scientific research and development are used to evaluate the impact of substances on the environment and human health, determine the extent of exposure to contaminants, guide the development of preventive and control measures by identifying pollution prevention and technology solutions, and provide specialized sampling and analytical techniques used in compliance promotion and enforcement. Monitoring changes in the environment and in human health trends is essential for assessing the impact of toxic substances and the effectiveness of measures meant to minimize environmental damage and real and potential threats to human life. Information gathering on the use and release of substances informs understanding and decision-making by governments, industry and the public.

Risk Assessment — Substance risk assessments are based on sound science, which supports a better understanding of their impacts and exposure to the environment and human health. The assessments incorporate the precautionary principle and a weight of evidence approach. Risk assessment also helps to identify the sources of pollution that pose the greatest risk to the environment and human health. While risk assessment is the prelude to, and informs, the risk management stage for all programs under CEPA 1999, the Act provides explicit direction on the assessment of toxic substances and the assessment of wastes and other matter that are destined for disposal at sea.

Risk Management — Based on the scientific information available, strategies are developed to determine how best to manage toxic and other substances and what kinds of actions are required. Social, economic and technology factors are integral to risk management decision making, including considering which risk management instruments are the most cost-effective. While CEPA 1999 provides for certain instruments developed under the Act such as regulations, pollution prevention plans, guidelines and codes of practice, other tools such as voluntary agreements, other Acts of Parliament or provincial/territorial actions may also be suitable to manage particular risks posed by a substance.

Compliance Promotion and Enforcement — Compliance promotion and enforcement of CEPA 1999 and its regulations are necessary to achieve the highest level of environmental quality for all Canadians. Providing public opportunities for input to the creation of regulations and compliance promotion programs should result in a high rate of compliance. In cases of non-compliance, CEPA 1999 enforcement officers will investigate. If an alleged violation is confirmed, action will be taken using one or more of the enforcement tools available under CEPA 1999. Information gathered during the compliance promotion and enforcement stage helps to evaluate the effectiveness of controls and monitoring.

5 Existing Substances

CEPA 1999 includes specific requirements for the assessment and management of substances currently existing in commerce or being released to the environment in Canada. The Minister of the Environment and the Minister of Health jointly administer this part of the Act.

5.1 What are Existing Substances?

There are currently about 23 000 substances, which can be manufactured in, imported into, or used in Canada on a commercial scale, that have not been assessed for the risks they pose to the environment or human health. These substances comprise the Domestic Substances List. Substances not on this list are considered to be new to Canada. A substance as defined under CEPA 1999 includes any distinguishable kind of organic or inorganic matter, whether animate or inanimate that is capable of being released as a single substance, an effluent, emission, waste or a mixture into the Canadian environment.

What is the Domestic Substances List?

The Domestic Substances List includes substances that were, between January 1, 1984, and December 31, 1986, in commercial use in Canada, or were used for commercial manufacturing purposes, or were manufactured in or imported into Canada in a quantity of 100 kg or more in any one calendar year. The list is regularly amended to include additional substances that have been assessed under the Act and allowed into Canada. The Domestic Substances List currently contains approximately 23 000 substances from the original list along with an additional 1954 substances that have been added to the list following assessments of new substances.

CEPA 1999 introduced more processes for assessing these substances to determine if they are toxic according to CEPA 1999. The three key assessment processes are:

- categorization and screening assessment of the Domestic Substances List;
- assessment of the Priority Substances List; and,
- review of other jurisdictions' decisions.

Other assessments may be triggered by information provided by other programs, industry and scientific research.

5.2 How are the Risks Assessed?

5.2.1 What are Risk Assessments?

Risk assessments done under CEPA 1999 consider impacts on human and non-human organisms and the physical environment. These assessments consider not only the hazard posed by a substance, but the exposure or likelihood that a person, organism or the environment will come in contact with that

substance. The exposure or potential for exposure of a substance depends on the amount of substance released into the environment and its fate. The conclusion of the assessment is based on the application of the precautionary principle and a weight of evidence approach.

5.2.2 What are Categorization and Screening Assessments?

Under CEPA 1999, all 23 000 substances on the Domestic Substances List that have not been subject to notification and assessment as new substances must be "categorized" by September 13, 2006, along with all living substances added to the list. Categorization is essentially an initial priority setting mechanism, which involves the systematic identification of substances on the Domestic Substances List that meet the following criteria:

- are inherently toxic (cause toxic effects) to humans or non-human organisms and display either the characteristics of persistence (take a long time to break down) or bioaccumulation (collect in living organisms and end up in the food chain); or
- may present to individuals in Canada the greatest potential for exposure.

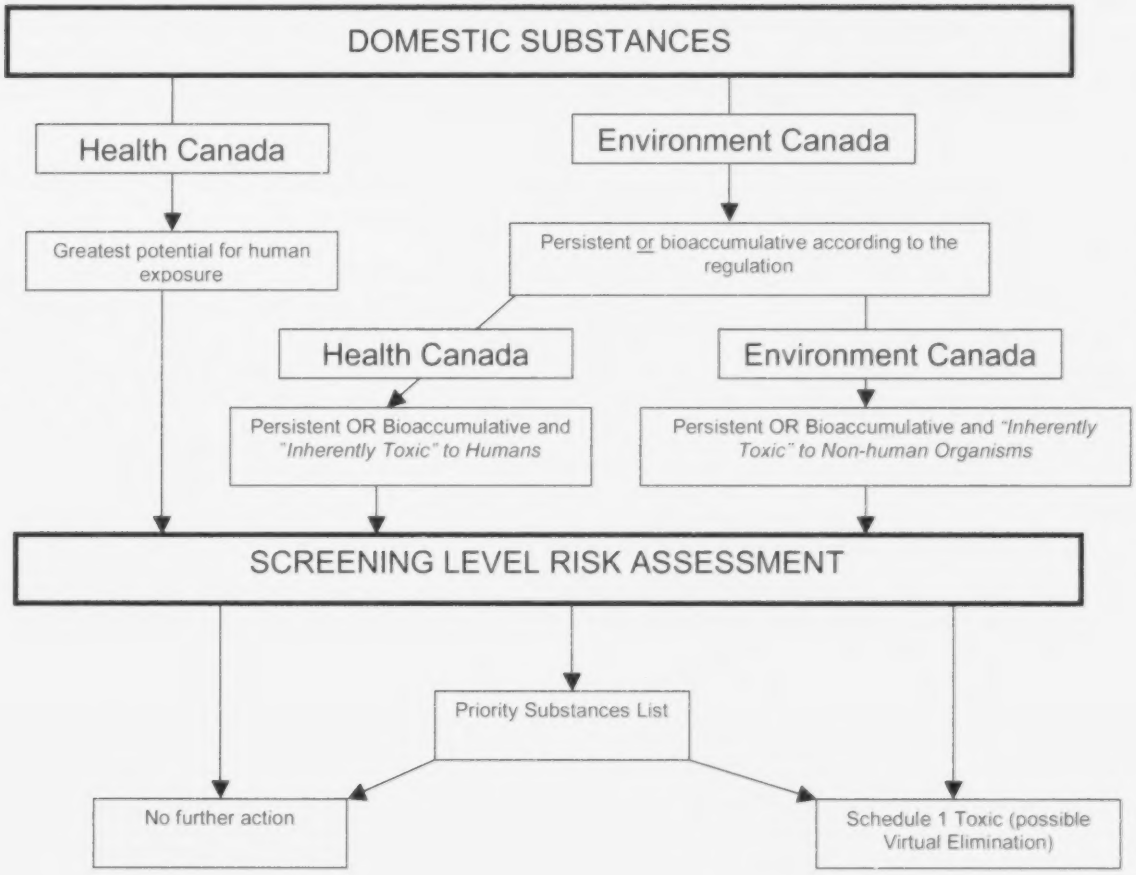
What is Toxic under CEPA 1999?

Determining a substance to be toxic under CEPA 1999 is a function of its release or possible release into the environment, the resulting concentrations in environmental media and its inherent toxicity. Section 64 of CEPA 1999 defines a substance as toxic "if it is entering or may enter the environment in a quantity or concentration or under conditions that:

- *have or may have an immediate or long-term harmful effect on the environment or its biological diversity;*
- *constitute or may constitute a danger to the environment on which life depends; or*
- *constitute or may constitute a danger in Canada to human life or health."*

Substances that meet the specified criteria will undergo a screening level risk assessment. A screening assessment involves an analysis of a substance to determine whether the substance is toxic or capable of becoming toxic as defined in CEPA 1999.

Figure 2: Categorization and Screening Process


DOMESTIC SUBSTANCES
Health Canada
Environment Canada
Greatest potential for human exposure
Persistent or bioaccumulative according to the regulation
Health Canada
Environment Canada
Persistent OR Bioaccumulative and "Inherently Toxic" to Humans
Persistent OR Bioaccumulative and "Inherently Toxic" to Non-human Organisms
SCREENING LEVEL RISK ASSESSMENT
Priority Substances List
No further action
Schedule 1 Toxic (possible Virtual Elimination)

5.2.3 What is the Priority Substances List?

The CEPA 1999 Priority Substances List continues to be the method used to focus on those chemicals and other substances that require investigation on a priority and in-depth basis to determine if they are toxic under the Act. Substances can be added to the Priority Substances List when a more comprehensive assessment is required following a screening assessment or review of another jurisdiction's decision. Also, any person may ask the Minister to add a substance to that list. CEPA 1999 requires that the substance be assessed within five years from the date the substance is added to the list. (see figure 2)

Priority Substances Lists

The first Priority Substances List was established in 1989. Out of the 44 chemicals on the first list, 25 were declared to be toxic under the previous CEPA. The second Priority Substances List of 25 more substances was published in 1995. Out of the 23 assessments published, 18 substances were deemed to be toxic The Ministers of the Environment and Health suspended the assessment period for the other two substances (aluminum compounds and ethylene glycol) in order for Health Canada to collect new or additional information required to assess whether the substances are toxic or capable of becoming toxic.

5.2.4 What is the Review of Decisions of Other Jurisdictions?

CEPA 1999 calls for cooperating and developing procedures for exchanging information on substances with other governments in Canada and member states of the Organization for Economic Co-operation and Development. When the Minister of the Environment receives information that another government has prohibited or substantially restricted a substance for environmental or health reasons, the Ministers of the Environment and Health are obliged to review the decision. The review determines whether the substance is toxic or capable of becoming toxic in the Canadian environment. In this way, Canada will benefit from a streamlined decision-making process through the sharing of scientific data, the capacity of other governments and efforts by others to develop risk management measures.

5.2.5 What are the Outcomes of a Risk Assessment or Review of a Decision by Another Jurisdiction?

Under CEPA 1999, once the Ministers have conducted a risk assessment of an existing substance under the Priority Substances List, a screening level risk assessment or a review of a decision by another jurisdiction, they must propose one of three measures:

- They may add the substance to the Priority Substances List. Typically, they will do this if they decide that there is a need for a more comprehensive risk assessment.

- They may recommend that the Governor in Council (the federal Cabinet) add the substance to the List of Toxic Substances (Schedule 1) and, if applicable, to the Virtual Elimination List. They will typically add the substance to Schedule 1 if they determine that the substance meets the criteria for "toxic" under the Act and that regulatory or pollution prevention or environmental emergency planning risk management measures should be taken under CEPA 1999.

What is the List of Toxic Substances?

Substances that meet the definition of toxic under CEPA 1999 can be placed on Schedule 1 of the Act, the List of Toxic Substances. This does not control the substance but allows the Government to proceed with regulations, pollution prevention plans or environmental emergency plans.

- They may propose no further action under CEPA 1999. They will typically do this if they determine that the substance is not "toxic." They also may propose no further action under CEPA 1999 if they determine that the substance is toxic but that actions being taken or about to be taken under other federal acts or by provincial, territorial or Aboriginal governments are sufficient to manage the risks in a timely manner.

5.2.6 What are the Other Triggers for Risk Assessment?

Other assessments may be triggered by information provided by other programs, industry and scientific research. Substances can be added to the List of Toxic Substances based on any assessment process that satisfies the Ministers that a substance is toxic, without having gone through one of the three types of CEPA 1999 assessments already discussed. Any other type of assessment can be used that satisfies the Governor in Council, on the recommendation of the Ministers of Environment and Health, that a substance is toxic. The other types of assessments that have been used in the past to add a substance to the list were based on collaborative efforts nationally or internationally.

CEPA 1999 allows the government to require persons to submit information on substances where a significant new activity for a substance has been identified. A significant new activity is an alternative use of the substance or other activity that results or may result in:

- a significantly greater quantity or concentration of the substance in the environment; or
- a significantly different manner or circumstances of exposure of the environment to the substance.

Significant new activities can apply to existing substances on the Domestic Substances List or new substances. The government assesses the new information on the substance to determine if it is toxic in relation to the significant new activity.

CEPA 1999 requires that persons who obtain new information on a substance that indicates it might be toxic must submit this information to the government.

5.2.7 What are the Opportunities for Public Participation?

Summaries of the assessment conclusions and the proposed measure (no further action, addition to the Priority Substances List, or addition to the List of Toxic Substances) are published in the *Canada Gazette*, Part I for a 60-day public comment period. Interested parties may bring forward additional scientific evidence to support or refute the Ministers' decision or file a notice of objection requesting that a Board of Review be established (see 18.3 for more information). Depending on the nature of the comments received, the Minister of the Environment then determines if further discussions or a Board of Review are warranted.

After taking into account any information provided during this 60-day period, the Ministers publish their final decision in the *Canada Gazette*, Part I. The Gazette notices are published on the CEPA Environmental Registry, a website found at http://www.ec.gc.ca/CEPARegistry.

5.3 How are the Risks Managed?

5.3.1 What Risk Management Measures are Available?

Examples of risk management measures under CEPA 1999 for existing substances include regulations, pollution prevention plans, environmental emergency plans, guidelines, codes of practice and administrative agreements. These measures may target any aspect of the substance's life cycle, from the research and development stage through manufacture, use, storage, transport and ultimate disposal. Risk management measures for toxic substances are developed through the Toxics Management Process. For regulations, pollution prevention plans or environmental emergency plans the substance must be on the List of Toxic Substances or in the case of environmental emergency plans be, at least, recommended for addition to the List.

CEPA 1999 provides the authority for various risk management measures:

- Regulations impose restrictions on an activity related to a substance, or set limits on the concentrations of a substance that can be used, released to the environment or be present in a product;

- Pollution prevention plans require the preparation and implementation of a plan outlining actions to prevent or minimize the creation or release of pollutants and waste;

- Environmental emergency plans require persons to prepare and implement a plan regarding the prevention of, preparedness for, response to, and recovery from an environmental emergency;

- Environmental quality objectives recommend qualitative or quantitative goals or purposes for pollution prevention or control of toxic substances. They often recommend ambient environmental quality targets or maximum acceptable levels.

- Environmental codes of practice recommend procedures, practices, or quantities of releases relating to facilities and activities during any phase of development of and operation involving a substance, and any subsequent monitoring activities.

- Environmental quality guidelines can be developed to recommend a concentration for toxic substances in surface water, agricultural water, soil, sediment, and human and animal tissue. Guidelines may also be developed to prevent, prepare for, or respond to an environmental emergency or to restore environmental quality.

- Environmental release guidelines include standards expressed as concentrations or quantities, for the release of substances into the environment from facilities or activities.

- Agreements respecting environmental data and research are usually cooperative arrangements with a provincial, territorial, aboriginal or foreign government or any person respecting the creation, operation, and maintenance of a system for monitoring environmental quality.

- Administrative agreements are usually work-sharing arrangements between the federal government and provincial, territorial, or aboriginal governments or aboriginal peoples respecting the administration of CEPA 1999.

In developing risk management measures, the government must give priority to pollution prevention actions. When substances are inherently toxic to humans or non-human organisms, persistent, bioaccumulative, and present in the environment primarily as a result of human activity but are not naturally occurring radionuclides or naturally occurring inorganic substances, then they must be recommended for addition to the List of Toxic Substances. They are also proposed for virtual elimination of releases to the environment and added to the Virtual Elimination List. Virtual elimination is the reduction of releases to the environment of a substance to a level below which its release cannot be accurately measured (the level of quantification). Risk management measures are developed through the Toxics Management Process.

Toxics Management Process

Environment Canada is committed to considering the full range of potential preventive and control measures and recognizing other governments' roles when developing strategies to manage toxic substances under CEPA 1999. The National Advisory Committee of CEPA 1999 plays a key role in advising the federal government on activities under the Act and on cooperative, coordinated approaches to the management of toxic substances.

Risk management measures for toxic substances are developed through the Toxics Management Process. This process allows the federal government to meet the obligations set out in CEPA 1999 and ensures that stakeholder consultations are effective. Central to the toxics management process is the development of a risk management strategy. The risk management strategy, which can vary in format, outlines the proposed approach for managing the risks to the environment and human health for a particular toxic substance.

In developing the risk management strategy, Environment Canada and Health Canada identify the sources that pose the greatest risk to the environment and human health, guided by the science in the risk assessment. A risk management objective is then identified for these sources. This objective is usually based on results achieved from the best available processes, products or techniques used by the sector or, in some cases, environmental quality objectives.

Once an objective has been set, the management measures that could achieve the risk management objective for each source are selected. All available tools, including existing management initiatives, are initially considered. These include instruments under CEPA 1999 as well as other risk management tools that are outside of CEPA 1999, including the regulatory provisions of other governments and voluntary approaches. The suite of tools can comprise a combination of measures representing the most feasible options for managing the substance. For a toxic substance that is subject to the time-clock provisions, at least one of the risk management measures must be a CEPA 1999 instrument. For example, there may be cases in which a new regulation or pollution prevention plan under CEPA 1999 would be the best option for addressing risks posed by one source and would satisfy the time clock requirements of CEPA 1999, while provinces, territories or aboriginal governments may be better situated to address another source, and an existing voluntary agreement may sufficiently address yet another source.

5.3.2 What are CEPA 1999's Time-Clock Provisions?

For a substance found to be toxic through a Priority Substances List assessment, a screening assessment, or the review of a decision by another jurisdiction, and when that substance has been added to the List of Toxic Substances, a proposed regulation or instrument establishing "preventive or control actions" for managing the substance must be developed with 24 months. The proposal is published in the *Canada*

Gazette, Part I, for a 60-day comment period. Once proposed, the Ministers have a further 18 months to finalize the regulation or instrument. The Gazette notices are also published on the CEPA Environmental Registry website.

For a risk management instrument to satisfy CEPA 1999's requirements, it must not simply be made under a provision of CEPA 1999 but must also pass the "legal test" of establishing preventive or control actions that reduce or eliminate the risks to the environment or human health. Each instrument is assessed on a case-by-case basis to determine whether this requirement is met.

The time clock provisions do not apply to substances added to the List of Toxic Substances on the basis of assessments that are not the formal CEPA 1999 assessments (i.e. through assessments other than Priority Substances List assessment, a screening assessment, or the review of a decision by another jurisdiction). However, all of the risk management processes, tools and instruments available to the government for toxic substances described above are also available when substances are listed in this manner.

5.3.3 What are the Opportunities for Public Participation?

Within the Toxics Management Process, the government may hold preliminary consultations with the most affected stakeholders during the development of the risk management strategy.

CEPA 1999 also provides formal opportunities for public participation during the risk management stage. Proposed instruments are published in the *Canada Gazette*, Part I for a 60-day comment period and on the CEPA Environmental Registry. Interested parties can provide comments on the proposed regulation or instrument or file a notice of objection requesting that a Board of Review be established. A Board of Review inquires into the nature and extent of the danger posed by the substance that is the subject of the order or the proposed instrument or regulation (see section 18.3 for more information). Depending on the nature of the comments received, the Minister of the Environment then determines if further discussions or a Board of Review are warranted.

After taking into account any information provided during this 60-day period, the Ministers publish the final instrument in the *Canada Gazette*, Part I or II depending on whether the measure consists of a regulation or other instrument, as well as on the CEPA Environmental Registry.

5.4 How are Exports of Substances Managed?

CEPA 1999 provides the authority to establish an Export Control List (Schedule 3 of the Act) containing substances whose export is controlled because their use in Canada is prohibited or severely restricted or because Canada has accepted, through an international agreement, to control their export. Prohibited substances can be exported only if they are to be destroyed or if the export is in compliance with regulations. Regulations can be made addressing:

- prohibitions on export;
- conditions under which an export may be made;
- the type of information to be provided to the Minister with respect to the export; and
- the type of information to accompany an export and to be kept by the exporter.

Details concerning these exports are made public through the CEPA Environmental Registry website. These provisions of CEPA 1999 allow the federal government to ratify the *Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*.

6 New Substances

6.1 What are New Substances?

CEPA 1999 ensures that no new substances are introduced into the Canadian marketplace before they have been assessed to determine whether or not they are toxic or capable of becoming toxic to the environment or human health. Substances that are not on the Domestic Substances List are considered to be new to Canada and must be notified. New substances that are accepted as being in commercial use internationally are listed on the Non-Domestic Substances List. Substances on the Non-Domestic Substances List must also be notified, but are subject to lesser information requirements. New substances cannot be manufactured or imported until:

- the Minister has been notified prior to manufacturing or importation of the substance;
- relevant information needed for an assessment of its potential toxicity has been provided to the Minister and the appropriate fee has been paid; and
- the period for assessing the information (as set out in regulations) has expired

The risks of substances determined to be or suspected of being toxic or capable of becoming toxic may be managed, as necessary, through conditions or prohibitions imposed on their import or manufacture.

What is the Non-Domestic Substances List?

The Non-Domestic Substances List is an inventory of substances that are not on the Domestic Substances List but are accepted as being in commercial use internationally. The list is based on the United States Environmental Protection Agency's Toxic Substances Control Act Chemical Substances Inventory, and contains more than 58 000 entries.

If these notification and assessment requirements are met by another federal Act, then the CEPA 1999 requirements do not apply. This means that CEPA 1999 in effect acts as a "safety net"—unless new substances fall under other Acts that are specifically listed in Schedule 2 regarding chemicals and polymers, CEPA 1999 requirements will apply to all new substances. Federal Acts and regulations currently listed on Schedule 2 are the *Pest Control Products Act, Feeds Act* and *Fertilizers Act*, as well as their regulations.

6.2 How are the Risks Assessed?

Anyone interested in manufacturing or importing a new substance will be required to provide specific information for risk assessment purposes. Importers or manufacturers may also be required to provide information on "significant new activities," where a substance's exposure may change significantly based on factors such as new uses or volume of use (see Section 6.4).

Environment Canada and Health Canada evaluate new substances for risks to the environment and human health. A new substance assessment results in one of the following outcomes:

- if the substance is not suspected to be toxic, the notifier may import or manufacture the substance after the assessment period has expired;
- if the substance is suspected of being toxic or becoming toxic, the government may take risk management measures;
- if the substance is not suspected of being toxic but a significant new activity could result in the substance becoming toxic, the substance can be subject to re-notification under certain conditions.

6.3 How are the Risks Managed?

The government can take the following risk management measures for new substances that are toxic or suspected to be toxic:

- permit the manufacture or import of the substance subject to specified conditions;
- prohibit the manufacture or import of the substance for a period not exceeding two years unless replaced by a regulation; or
- prohibit the manufacture or import of the substance until additional information or test results have been submitted and assessed.

The government must undertake these risk management measures and publish them in the *Canada Gazette*, Part I before the expiration of the assessment period. The Gazette notices are also made public on the CEPA Environmental Registry website.

6.4 What is a Significant New Activity?

A significant new activity is an alternative use of a substance or other activity that results or may result in:

- a significantly greater quantity or concentration of the substance in the environment; or
- a significantly different manner or circumstances of exposure to the substance.

If there is a suspicion that a significant new activity in relation to the substance may result in the substance becoming toxic, the substance can be subject to a Significant New Activity Notice. The Notice communicates the criteria under which the government must be re-notified. The government assesses the new information on the substance to determine if it is toxic in relation to the significant new activity. Significant new activities can apply to existing substances on the Domestic Substances List or to new substances.

7 Animate Products of Biotechnology

Animate products of biotechnology (living organisms) are dealt with under a separate part of CEPA 1999, which mirrors the new substances requirements but with some differences to account for the special characteristics of living organisms. Important differences from the way chemicals and polymers are handled as new substances include recognition that:

- quantity thresholds or limitations used for chemicals and polymers are not relevant for notification of new organisms because organisms are capable of reproduction; and

- special regulation-making powers allow for implementing international agreements and respecting the safe and effective use of living organisms in pollution prevention.

Notification and assessment requirements are met by another federal Act, then the CEPA 1999 requirements do not apply. This means that CEPA 1999 in effect acts as a "safety net"—unless new substances fall under other Acts that are specifically listed in Schedule 4 regarding animate products of biotechnology, CEPA 1999 requirements will apply to all new animate products of biotechnology. Federal Acts and regulations currently listed on Schedule 4 are the *Pest Control Products Act*, the *Fertilizers Act*, the *Feeds Act*, the *Seeds Act* and the *Health of Animals Act*, as well as the Regulations under those Acts.

There are currently 35 living organisms listed on the Domestic Substances List.

8 Marine Environment and Disposal at Sea

8.1 Land-Based Sources of Marine Pollution

8.1.1 What are Land-based Sources of Marine Pollution?

The major threats to the health, productivity and biodiversity of the marine environment result from human activities on land in coastal areas and further inland. About 80% of the pollution load in the oceans originates from land-based activities. This includes wastes and run-off from municipal, industrial and agricultural activities, as well as deposits from the atmosphere. These contaminants affect the most productive areas of the marine environment, including estuaries and nearshore coastal waters. The marine environment is also threatened by physical alterations of the coastal zone, including destruction of habitats of vital importance to maintain ecosystem health. The impacts from land-based activities include closures of shellfish growing areas, degraded beaches, destroyed habitat and contaminated sites.

8.1.2 Who Protects Canada's Marine Environment?

The protection of the marine environment in Canada is a responsibility shared by all levels of government. The CEPA 1999 provisions are intended to complement existing regulatory measures and supplement the authority that exists in other federal, provincial, territorial and aboriginal government laws.

8.1.3 How is CEPA 1999 Used to Manage Land-based Sources of Marine Pollution?

CEPA 1999 provides the authority to issue non-regulatory objectives, guidelines and codes of practice to prevent and reduce marine pollution from land-based sources. This is done after consultation with other affected governments.

Keeping in mind the shared responsibility and cost-effectiveness of building on existing programs, Environment Canada, Fisheries and Oceans Canada, and the provinces and territories developed a National Programme of Action for the Protection of the Marine Environment from Land-based Activities. As a national framework and plan, the Programme provides an assessment of the state of Canada's coastal and marine environment and identifies the management objectives strategies and priority actions that need to be implemented.

8.2 Disposal at Sea

8.2.1 What is Disposal at Sea?

Each year in Canada, two to three million tonnes of material is disposed of at sea. Most of this is material dredged from ocean floors that must be moved to keep shipping channels and harbours clear for navigation and commerce. CEPA 1999 covers the disposal of certain substances at sea from ships, aircraft, platforms or other structures. Discharges from land-based facilities or from normal ship operations are not considered disposal at sea, but are subject to controls under other Acts.

8.2.2 How is CEPA 1999 Used to Manage Disposal at Sea?

CEPA 1999 prohibits the disposal of wastes and other matter at sea within Canadian jurisdiction and by Canadian ships in international waters and waters under foreign jurisdiction, unless the disposal is done under a permit issued by the Minister. Permits typically govern timing, handling, storing, loading, placement at the disposal site and monitoring requirements. Permits are published in the *Canada Gazette*, Part I and on the CEPA Environmental Registry website. The permit system allows Canada to meet international obligations under the *London Convention, 1972* and the *1996 Protocol to the Convention*.

Only those substances listed in Schedule 5 of CEPA 1999 may be considered for disposal at sea. These include dredged material, fisheries waste, ships, inert geological matter, uncontaminated organic matter and bulky substances that are primarily composed of iron, steel, concrete or other similar matter. Incineration at sea is banned except under emergency situations or if it is waste generated on board the ship or structure.

Permits are granted on a case-by-case basis after an application and review process. Applicants for a disposal at sea permit must provide detailed disposal data, proof that the applicant published a notice of intent in a local newspaper, any required samples and analyses and payment of fees. Applicants must also comply with the Assessment of Waste or Other Matter in Schedule 6 of CEPA 1999, which requires consideration of other disposal options, such as recycling and means to prevent or reduce the generation of waste. A permit for disposal at sea will be approved only if it is the environmentally preferable and practical option. Permits are not granted if practical opportunities are available to recycle or reuse the material.

Once a permit is issued, Environment Canada conducts periodic inspections during disposal operations to ensure compliance with the permit's conditions. After disposal operations are completed, monitoring studies are conducted at selected sites to verify that permit conditions were met and that scientific assumptions made during the permit review process were correct and sufficient to protect the environment. Results of the monitoring studies are considered in future permit assessments.

9 Vehicles, Engines and Fuels

9.1 What are Emissions from Transportation?

Transportation is the largest source of air pollution in Canada. The use of internal combustion engines to power vehicles and equipment results in a number of smog-causing pollutants, including nitrogen oxides, volatile organic compounds, particulate matter and carbon monoxide. Fuels that are burned in cars, trucks and in stationary equipment also contain sulphur. These substances are directly related to major adverse impacts on the environment and health of Canadians.

The use of internal combustion engines for off-road vehicles, lawn and garden equipment and other machines similarly causes air pollution. The contribution to air pollution from these sources has become more prominent as road vehicles meet ever-tighter emission standards.

Pollutant emissions can be effectively controlled through improvements to fuel quality and through stringent vehicle and engine emission standards. With authorities to control both fuel and vehicle emissions in CEPA 1999, there are better opportunities to ensure that a system approach is taken.

9.2 How is CEPA 1999 Used to Manage Fuels?

CEPA 1999 includes provisions to control the quality of fuels. It provides for maximums, minimums or a range of characteristics to be set, and also allows for a performance-based approach to fuel standards.

Other provisions in CEPA 1999 permit flexibility in the authority to make regulations covering, for example, different sources of fuels, the place or time of their use and the fuel's effect on the operation of emissions control equipment. There are also provisions for a "national fuels mark," a trademark that could be used to promote a national standard for fuels where certain characteristics may be desirable.

9.3 How is CEPA 1999 Used to Manage Emissions from Vehicles, Engines and Equipment?

CEPA 1999 incorporates responsibility for regulating emissions from on-road vehicles that were previously contained in the *Motor Vehicle Safety Act* and its regulations and administered by Transport Canada. In addition, CEPA 1999 allows for regulating emissions from engines used in off-road applications. Examples include spark-ignition (gasoline) engines used in lawnmowers, chainsaws, light industrial machines, outboard motors and off-road recreational vehicles as well as compression ignition (diesel) engines used in construction, industrial, farm and forestry machines. The authority for regulating emissions from engines used to power large marine vessels, aircraft and trains are covered under separate federal legislation administered by Transport Canada.

The main objective is to reduce the contribution of on-road and off-road vehicles and engines to air pollution in Canada through the development and implementation of regulated emission performance standards for vehicles, engines and equipment manufactured in Canada and imported into Canada.

The Act provides for the adoption of emission regulations from other countries, including those in the United States, which have the most progressive emission standards for vehicles and engines. This approach provides for harmonized products in North America and combined environmental and economic benefits.

CEPA 1999 also provides for a "national emissions mark," which can be used to show that vehicles, engines and equipment meet emissions standards. Companies are not permitted to import into or to transport within Canada or sell any prescribed vehicles, engines or equipment that do not have a national emissions mark or do not meet prescribed requirements.

10 Hazardous Wastes

10.1 What is Hazardous Waste?

Hazardous waste includes a wide range of residues from industrial production including used solvents, acids and bases, leftovers from oil refining and the manufacture of chemicals and metal processing. Several common consumer products, including old car batteries and oil-based paints are also hazardous once they are discarded. The nature and concentration of certain chemicals in many wastes makes them potentially hazardous to the environment and human health. They have characteristics such as flammability, toxicity and corrosivity. They may represent an immediate danger, such as ability to burn skin on contact, or longer-term environmental or human health risks due to accumulation and persistence of toxic substances in the environment.

Every year, approximately six million tonnes of hazardous waste are produced in Canada. Imports of hazardous waste total about 417 000 tonnes, of which approximately 55% is destined for recycling. Exports of hazardous wastes total about 320 000 tonnes, of which approximately 65% destined for recycling. Until ways can be found to avoid creating hazardous waste, it must be managed in a way that minimizes risks to the environment and human health.

10.2 How is CEPA 1999 Used to Manage Hazardous Waste?

Under CEPA 1999, transboundary movements (imports, exports, or transits across provincial or territorial borders) of hazardous wastes or hazardous recyclable materials cannot take place unless the Minister is notified and a permit is issued. The prior informed consent of the countries of transit and destination are required. Shipments are also tracked from point of origin to destination. Notification information is made public in the *Canada Gazette*, Part I and on the CEPA Environmental Registry website. These provisions allow for the implementation of Canada's obligations under three international agreements:

- *the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal;*
- the Organisation for Economic Cooperation and Development's *Decision of the Council concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations C(2001)107/Final;* and
- the *Canada-United States Agreement on the Transboundary Movement of Hazardous Waste.*

CEPA 1999 provides additional authority to:

- define hazardous waste and hazardous recyclable material, which will enable progress towards a federal-provincial-territorial harmonized approach to the management of hazardous waste and hazardous recyclable material;
- regulate exports and imports of prescribed non-hazardous wastes destined for final disposal (e.g., municipal solid wastes);

- develop environmentally sound management criteria to consider prior to refusing to issue an export, import and transit permit, to form an opinion as to whether the hazardous waste or hazardous recyclable material will be managed in a manner that will protect the environment and human health;

- require exporters of hazardous wastes to develop and implement reduction plans for exports of waste destined for final disposal; and

- control interprovincial movements of hazardous wastes and hazardous recyclable materials.

The Minister may also issue a Permit of Equivalent Level of Environmental Safety for export, import and transit of hazardous wastes, hazardous recyclable material or prescribed non-hazardous waste being sent for final disposal, or for interprovincial movement of hazardous waste and hazardous recyclable material. By these permits, the Minister can vary or set aside provisions of regulations governing these activities if satisfied that the level of environmental safety under the permit will be equivalent to what would have been achieved under the regulations.

11 Other Sources of Pollution and Wastes

11.1 International Air and Water Pollution

The international air and water pollution provisions allow the Minister to address Canadian sources that pollute or may pollute the air or water in another country or where that pollution violates an international agreement binding on Canada. This section addresses any type of release of substances that contributes to international air or water pollution, not just those that may have been determined to be toxic. Before using the powers in this division, the Minister must first consult with the provincial, territorial or aboriginal government responsible for the area in which the pollution source is located. This consultation will determine if that government is willing or able to address the problem. If that government is not willing or able to take action, the Minister must take action to reduce or prevent the pollution including:

- requiring pollution prevention planning;
- recommending the making of regulations; or
- issuing an interim order for emergency situations.

11.2 Nutrients

Nutrients, as defined in CEPA 1999, are substances that promote the growth of aquatic vegetation. CEPA 1999 provides authority to regulate nutrients that degrade or have a negative impact on an aquatic ecosystem, such as nutrients contained in cleaning products and water conditioners. CEPA 1999 prohibits the manufacture for use, sale or import of a cleaning product or water conditioner that contains a prescribed nutrient in a concentration or quantity that exceeds the regulated limit. For example, the level of phosphates in laundry detergent is currently regulated under CEPA 1999. CEPA 1999, however, cannot be used to regulate sources of nutrients already regulated under other federal Acts that provide sufficient protection of the environment.

12 Environmental Emergencies

12.1 What is an Environmental Emergency?

An environmental emergency, as defined in CEPA 1999, is an uncontrolled, unplanned or accidental release of a substance (listed in regulations made under Part 8) into the environment or the reasonable likelihood of such a release that may affect the environment or human health. There are an estimated 20 000 environmental emergencies annually in Canada. The majority of the releases are minor and have minimal adverse impact on the environment. About 9 000 emergencies get reported to Environment Canada in any given year and about 1 000 of these require some form of involvement or action by Environment Canada. These incidents are primarily the result of accidents, improper maintenance or human error.

12.2 How is CEPA 1999 Used to Manage Environmental Emergencies?

When it comes to environmental emergencies, no one organization can do it all. Effective emergency response requires teamwork between governments, industry, communities and local organizations. CEPA 1999's environmental emergency provisions provide a "safety net" for the comprehensive management of environmental emergencies. Where no other federal or provincial regulations exist that adequately respond to environmental emergencies, CEPA 1999 can be used to fill these gaps to protect the environment and human health.

CEPA 1999 authorizes the government to make regulations and take non-regulatory measures to prevent, prepare for, respond to and recover from environmental emergencies. The preparation of environmental emergency plans can be required for substances that have been assessed to be toxic under CEPA 1999 and are on the List of Toxic Substances or are recommended for addition to that List. The Government also has the authority to make regulations to require that environmental emergency plans be developed for any substances prescribed in the regulations. These need not be limited to those assessed as toxic under CEPA 1999—they can be substances that are or may be hazardous to the environment or human health in an environmental emergency. *Environmental Emergency Regulations*, listing over 170 substances and requiring the preparation and implementation of environmental emergency plans for those substances, were made under CEPA 1999 in 2003.

These provisions of the Act also establish a regime that makes the person who owns or controls the substance liable for restoring the damaged environment and the costs and expenses incurred in responding to an environmental emergency.

The Minister has the authority to conduct research, conduct and publicize demonstration projects and issue guidelines and codes of practice respecting environmental emergencies. Research could include studies and public demonstrations on the causes of environmental emergencies and remedial measures for dealing with them. The Minister may also establish a national system for the notification and reporting of environmental emergencies.

Under the enforcement provisions, the court can require anyone who has been convicted of a violation under CEPA 1999 to prepare and implement an environmental emergency plan.

13 Government Operations and Federal and Aboriginal Lands

13.1 What are Government Operations, Federal Facilities and Aboriginal Lands?

CEPA 1999 applies to activities on Government of Canada lands. This includes federal departments, boards and agencies, federal works and undertakings, Crown corporations, federal land, persons on that land and other persons in so far as their activities involve that land. This part of the Act also applies to Aboriginal lands.

13.2 Why is there a Special Part of CEPA 1999 for Government Operations and Federal and Aboriginal Lands?

CEPA 1999 applies to all Canadian persons, whether individuals or companies, including federal operations. This means that regulations for toxic substances, fuels, disposal at sea and other matters apply equally to federal operations. Compliance is monitored and CEPA 1999 violations by federal operations are dealt with in the same manner as any other violations, including court action such as injunction and prosecution.

However, under Canada's Constitution, provincial environmental laws do not generally apply to federal lands. This means that federal operations and land, including aboriginal land, are, for the most part, not subject to provincial regulations or permit systems covering emissions, effluents, environmental emergencies, waste handling and other environmental matters. The non-application of these environmental protection laws creates the so-called "environmental protection regulatory gap" with respect to federal departments, boards, agencies, Crown corporations, federal works and undertakings on federal and aboriginal lands.

Under CEPA 1999, Environment Canada can establish regulatory and non-regulatory instruments to manage many, but not all, of the environmental protection risks on federal and aboriginal lands that would otherwise be addressed by provincial and territorial legislation.

13.3 How is CEPA 1999 Used to Manage Government Operations and Federal and Aboriginal Lands?

CEPA 1999 provides the government with broad powers to issue a range of nationally applied regulatory and non-regulatory tools specifically for activities carried out on federal and aboriginal lands. These regulatory and non-regulatory tools include the use of regulations, pollution prevention planning and the creation of codes of practice and guidelines for operations where non-regulatory measures would effectively protect the environment and human health. When created, these tools apply throughout Canada. This means that federal entities, federal land or aboriginal land situated in one province have the

same standards as federal entities, federal land or aboriginal land situated in another province. In certain circumstances, CEPA 1999 may also be used to develop tools that would apply only to federal entities, federal land or only to aboriginal lands, but the standards would have to be the same across the country, even though the corresponding provincial requirements may vary across the country.

14 Enforcement

14.1 What are the Principles of Enforcement?

CEPA 1999 provides the authority to carry out inspections and investigations to ensure that regulations made under the Act and the Act itself are followed. Enforcement of CEPA 1999 follows *the Compliance and Enforcement Policy* established for the Act, which includes the following guiding principles:

- compliance with CEPA 1999 and its regulations is mandatory;
- CEPA 1999 enforcement officers will:
    - apply the Act in a manner that is fair, predictable and consistent;
    - use rules, sanctions and processes securely founded in law;
    - administer the Act with an emphasis on prevention of damage to the environment;
    - examine every suspected violation of which they have knowledge, and take action consistent with the *Compliance and Enforcement Policy*; and
    - encourage Canadians to report CEPA 1999 violations to them.

14.2 What Powers do Enforcement Officers Have?

CEPA 1999 provides the authority to designate persons or classes of persons as enforcement officers. Enforcement officers have a wide range of powers to enforce the Act, including all the powers of a peace officer. Powers include the right to:

- enter premises;
- examine any substance, product, fuel, cleaning product or water conditioner;
- open and examine the contents of any receptacle or package;
- examine any books, records, electronic data or other documents;
- take samples;
- seize evidence;
- conduct tests or take measurements;
- stop and detain conveyances such as a vehicle, ship or aircraft for the purpose of conducting an inspection; and
- use enforcement tools (see Section 14.4).

14.3 What Powers do CEPA Analysts Have?

CEPA 1999 also allows for the designation of individuals as CEPA analysts, who will support the enforcement function. CEPA analysts can be chemists, biologists, engineers, forensic accountants or laboratory personnel. They are entitled to accompany enforcement officers on inspections and they have the power to enter premises, open receptacles, take samples, conduct tests and measurements, and require that documents and data be provided to them. These powers can only be exercised when accompanied by an enforcement officer. Analysts do not have the power to use enforcement tools.

14.4 What are CEPA 1999's Enforcement Tools?

CEPA 1999 enforcement officers have the following enforcement tools at their disposal:

- warnings, when there is minimal or no threat to the environment or human life or health, to indicate the existence of an alleged violation, so that the alleged violator can take notice and return to compliance;
- directions to deal with or prevent illegal releases of regulated substances;
- tickets for offences under the Act where there is minimal or no threat to the environment or human life or health, such as the failure to submit a written report;
- Ministerial orders requiring remedial measures;
- detention orders for ships;
- environmental protection compliance orders to prevent or stop a violation;
- injunctions to stop or prevent a violation;
- prosecution under the authority of a Crown prosecutor; and
- environmental protection alternative measures, as an alternative to prosecution, to come to agreement on measures that the accused must take in order .o restore compliance.

14.5 What are CEPA 1999's Penalties for Violations?

The maximum penalties include fines of up to $1 million a day for each day an offence continues, imprisonment for up to three years or both. The Act includes mandatory sentencing criteria for consideration by the courts, such as the cost to remedy the damage done to the environment. Violators may also have to pay for clean-up costs or forfeit any profits earned as a result of an offence. Corporate officials can be prosecuted if they authorize, accept or participate in any violation of CEPA 1999 or its regulations.

15 Research and Monitoring

Science is the foundation of decision-making under CEPA 1999. The Act requires that the Minister of the Environment conduct research on the effects of pollution on environmental quality, the nature and dispersion of pollution on ecosystems, pollution prevention and the control and abatement of pollution. CEPA 1999 also requires both the Minister of the Environment and the Minister of Health to conduct research and studies specifically on hormone disrupting substances and measures to prevent or control the risks associated with these substances. In addition, the Minister of Health must conduct research on the role of substances in illnesses or health problems.

Scientific research also supports the assessment of substances and whether and how to control such substances. Environment Canada and Health Canada participate in a multitude of cooperative projects with universities and research agencies in Canada and around the world to conduct research related to environmental sciences.

Examples of CEPA 1999-related research include:

- field work and sampling programs to collect environmental information;
- laboratory analysis and the development of sampling and analytical techniques to measure environmental parameters, including protocols referenced in regulations and other pollution control instruments;
- research, modeling and monitoring activities to better understand and predict environmental impacts;
- research on the development of techniques for the categorization and assessment of priority substances;
- research and risk assessments to better understand new environmental issues, their impacts on the environment and to fill scientific data gaps;
- research and studies related to pollution prevention and the abatement of pollution; and
- technology development, demonstration, evaluation and research into new potential technologies to address environmental problems.

Additionally, CEPA 1999 requires the government to maintain a system for monitoring environmental quality in Canada, maintain environmental quality data and monitor ocean disposal sites.

16 Information Gathering and Reporting

The authority to gather information allows for environmental monitoring, research, state of the environment reporting, creating inventories and for the development of objectives, guidelines, codes of practice and regulations. Information gathering authorities under Part 3 of the Act are limited to what is in the possession of any person or is reasonably accessible to that person. As required under the Act, the Minister has issued guidelines respecting the use of these information-gathering powers.

Additional information gathering authorities are included under Part 5 of the Act in order to allow the Minister to assess whether or not a substance is toxic or capable of becoming toxic or for assessing whether to control or how to control a substance. In addition, the Minister can require toxicological and other tests if the Ministers of Environment and of Health have reason to suspect that a substance is toxic or capable of becoming toxic.

Both departments are required to distribute information to the public. Publishing information promotes public participation and gives Canadians access to environmental information that relates to their communities. CEPA 1999 requires the Minister of the Environment to distribute information on pollution prevention and periodic reports on the state of the environment. The Minister provides annual reports to Parliament on the administration and enforcement of the Act. The Minister of Health distributes available information about the effects of substances on human health.

The Minister of the Environment must maintain the CEPA Environmental Registry. The Registry is a comprehensive on-line source of CEPA-related documents including policies, guidelines, regulations, orders, agreements, notices and permits.

CEPA 1999 also requires that the Minister maintain and publish a National Pollutant Release Inventory. This inventory (searchable by postal code or substance) provides Canadians with facility-specific information regarding on-site releases and off-site transfers of over 300 substances listed on the inventory. Companies that manufacture, process or otherwise use a listed substance at or above the reporting threshold must report their releases or transfers to Environment Canada annually.

17 Public Participation

17.1 What are the Opportunities for Public Input in Decision-Making?

The role of the public in government decision-making processes is critical, as public trust and broad acceptance of risk management measures are acknowledged to be key for effective risk management implementation.

CEPA 1999 provides a structured, predictable approach to risk management decision-making that provides for the input and full consideration of public values and concerns at all stages of the decision-making process. The CEPA 1999 decision-making framework:

- enables the government to be informed on an ongoing basis of the public's concerns;
- allows the public to influence the identification of environmental problems to be assessed;
- engages a wide spectrum of stakeholders, including environmental groups, industries, aboriginal people, other governments and communities;
- provides an opportunity for public values to influence environmental objectives and solutions; and
- allows the public to articulate the levels of risk that are tolerable or acceptable, which influences the choice of appropriate risk management instruments.

Industry and individuals are continually invited to participate in a wide variety of public consultations through notices published in Canada's official parliamentary journal, the *Canada Gazette*. All consultations are also posted on the CEPA Environmental Registry website. The primary objective of the Environmental Registry is to communicate various types of initiatives under CEPA 1999 to better allow for public participation in the consultation process and to increase public understanding of the Act. The "Public Participation" section of the CEPA Environmental Registry website highlights all consultation opportunities and provides the background information needed for informed environmental decision-making. The Environmental Registry enables the public to monitor the progress of proposed regulations and other CEPA 1999 instruments.

17.2 What Rights do Citizens Have?

Part 2 of CEPA 1999 includes whistleblower protection that safeguards an individual's identity when reporting violations under this Act. This protection is extended to all employees in Canada. CEPA 1999 prohibits the disclosure of the identity of individuals who voluntarily report CEPA 1999 violations. In addition, it is an offence to dismiss, harass or discipline any employee who:

- voluntarily reports a CEPA 1999 violation,
- refuses to carry out conduct that the employee, in good faith, believes may result in a violation of the Act; or
- wishes to carry out conduct required by the Act or its regulations.

Under CEPA 1999, an individual who is at least 18 years of age and a resident of Canada can request that the Minister conduct an investigation of an alleged offence. Should the Minister fail to conduct an investigation or respond unreasonably and if there has been significant harm to the environment, then the individual has the right to proceed with an "Environmental Protection Action." This is a civil suit and seeks remediation of damage to the environment. The individual is not entitled to any personal damage award under the CEPA 1999 provisions, but can seek reimbursement of their costs in bringing the action.

18 Administrative Requirements

18.1 What is the National Advisory Committee?

CEPA 1999 requires the Minister to establish a National Advisory Committee composed of one representative for each of the federal Ministers of the Environment and Health, representatives from each province and territory and six representatives of aboriginal governments drawn from across Canada. An aboriginal government means a governing body that, through an agreement with the Government of Canada, is authorized to enact laws respecting the protection of the environment or the registration of vehicles or engines.

The Committee advises the Ministers on actions taken under the Act, which enables national, cooperative action and avoids duplication in regulatory activity among governments. The Committee also serves as the single window into provincial and territorial governments and representatives of aboriginal governments on offers to consult.

The duties of the NAC include advising the federal Ministers of the Environment and Health on:

- proposed regulations for toxic substances;
- proposed regulations on environmental emergencies;
- a cooperative, coordinated approach to the management of toxic substances; and
- any other matter of mutual interest.

18.2 What are Administrative and Equivalency Agreements?

CEPA 1999 includes provisions that allow the federal government to enter into administrative agreements with provincial and territorial governments, aboriginal governments as well as an aboriginal people (e.g., Band Councils). The Act allows the federal government to sign equivalency agreements with provincial, territorial and aboriginal governments.

Administrative agreements are work-sharing arrangements that can cover any matter related to the administration of the Act. Such matters can include inspections, investigations, information gathering, monitoring and reporting of collected data. These agreements do not release the federal government from any of its responsibilities under the law, nor do they delegate legislative power from one government to another.

The Act allows the use of equivalency agreements where, by Cabinet decision, a regulation under CEPA 1999 is declared to no longer apply in a province, a territory or an area under the jurisdiction of an aboriginal government that has equivalent requirements. The equivalent regulation does not have to have the same wording as the CEPA 1999 regulation, but have the same effect. The provincial, territorial or aboriginal government must also have a mechanism that allows individuals to request an investigation of

alleged violations. Equivalency agreements are possible for CEPA 1999 regulations dealing with toxic substances, international air or international water pollution, environmental emergencies and, for aboriginal governments only, regulations relating to aboriginal land or environmental protection generally and made under Part 9.

CEPA 1999 requires that all proposed equivalency and administrative agreements undergo a 60-day public comment period. Agreements terminate five years after coming into force to ensure regular review and renewal as necessary. Agreements may be terminated at any time with three months notice.

18.3 What is a Board of Review?

CEPA 1999 sets out procedures for establishing and conducting Boards of Review in response to notices of objection filed by members of the public. These provisions are an important component of the Act's enhanced provisions for public participation.

Any person may file a notice of objection to a decision, an order or a proposed regulation and request that Board of Review be established. The Ministers can establish a Board of Review to inquire into the nature and extent of the danger posed by the substance that is the subject of the order or the proposed regulation. In addition, the Minister may establish a Board of Review for other instruments (e.g., administrative or equivalency agreements) when request for such a Board is filed during the 60-day public comment following publication of the instrument in the *Canada Gazette*.

18.4 When is the Act Reviewed?

Every five years, a committee of one or both Houses of Parliament must review the Act, as required under CEPA 1999. The committee conducts a comprehensive review of the provisions and operations of the Act and makes recommendations regarding any changes to the Act or its administration. The review can therefore monitor the effectiveness of the legislation in protecting the environment and human health and preventing pollution.

Appendix A: Contacts

Further information on CEPA 1999 and related activities can be found online at:

- CEPA Environmental Registry Website (http://www.ec.gc.ca/CEPARegistry)
- Environment Canada's Green Lane ™ (http://www.ec.gc.ca); and
- Health Canada's Website (http://www.hc-sc.gc.ca).

Departmental publications are available from the departmental library or the nearest regional library. Many departmental publications are also available online at http://www.ec.gc.ca/publications or through Environment Canada's Inquiry Centre:

Inquiry Centre:
70 Crémazie St.
Gatineau, Quebec
K1A 0H3
Telephone: 819-997-2800 or 1-800-668-6767
Fax: 819-994-1412
TTY : 819-994-0736 (Teletype for the hearing impaired)
E-mail: enviroinfo@ec.gc.ca

The following communications contacts are also available to provide additional information:

Environment Canada
Mark Colpitts
Ottawa, Ontario
Canada, K1A 0K9
Telephone: (819) 953-6603
Fax: (819) 953-8125
E-mail: Mark.Colpitts@ec.gc.ca

Health Canada
A.L. 0900C2
Ottawa, Ontario
Canada, K1A 0K9
Telephone: (613) 957-2991
Fax: (613) 941-5366
TTY: 1-800-267-1245
E-mail: info@hc-sc.gc.ca

Appendix B: CEPA 1999 Program Websites

Disposal at Sea	http://www.ec.gc.ca/seadisposal
Enforcement	http://www.ec.gc.ca/ele-ale
Environmental Emergencies	http://www.ec.gc.ca/ee-ue
Existing Substances	http://www.ec.gc.ca/substances/ese
Hazardous Wastes	http://www.ec.gc.ca/tmb
Management of Toxic Substances	http://www.ec.gc.ca/toxics
National Office of Pollution Prevention	http://www.ec.gc.ca/nopp
New Substances	http://www.ec.gc.ca/substances/nsb/eng/index_e.htm
Science and Technology	http://www.ec.gc.ca/scitech

Appendix C: CEPA 1999 Provisions

Topic	Part, Section of CEPA 1999
Administration	Part 1
Administrative and Equivalency Agreements	Part 1, Sections 9 and 10
Animate Products of Biotechnology	Part 6
Boards of Review	Part 11, Sections 333 to 341
Citizens' Rights	Part 2
Disposal at Sea	Part 7, Division 3
Enforcement	Part 10
Environmental Emergencies	Part 8
Existing Substances	Part 5, Sections 64 to 79 and 90 to 99
Export of Substances	Part 5, Sections 100 to 103
Fuels	Part 7, Division 4
Government Operations and Federal and Aboriginal Lands	Part 9
Hazardous Wastes	Part 7, Division 8
Information Gathering and Reporting	Parts 3, 5 and 11
International Air and Water Pollution	Part 7, Division 6 and 7
Marine Environment (Land-based Sources of Pollution)	Part 7, Division 2
National Advisory Committee	Part 1, Section 6
New Substances	Part 5, Sections 80 to 89
Nutrients	Part 7, Division 1
Public Participation	Part 2
Research and Monitoring	Part 3
Review of the Act	Part 11, Section 343
Vehicles, Engines and Equipment Emissions	Part 7, Division 5

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Inquiry Centre
www.ec.gc.ca/inqry_e.html
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Gatineau, Quebec K1A 0H3
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The CEPA Environmental Registry
www.ec.gc.ca/CEPARegistry/